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MAR 31 2008

In re Application of
Laurent De Volder
Application No. 10/018,302
Filed: November 8, 2002
Attorney Docket No. U-013688-5

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ON PETITION
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This is a decision on the renewed petition filed November 14, 2007, under 37 CFR 1.181, to Invoke Supervisory Authority and to withdraw the holding of abandonment of the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181," or, as explained in more detail below, "...under 37 CFR 1.137(a)" or (b). This is not a final agency decision.

The above-referenced application was held abandoned on August 14, 2003 for failure to file corrected drawings in response to the Notice of Allowability mailed May 13, 2003. Accordingly, a Notice of Abandonment was mailed October 10, 2003.

In a Petition to Withdraw the Holding of Abandonment filed October 20, 2003, petitioners argued that the replacement drawings had been timely filed on August 13, 2003. Included with the petition was a copy of the drawings, a postcard receipt date stamped August 15, 2003 and a "Letter Accompanying Amendment After Allowance" which indicated that the drawings were being amended. While the documents included had a certificate of mail, the certificate of mail was not signed and neither was the response. Furthermore, the postcard receipt which is date stamped August 15, 2003, was not properly itemized to indicate that the drawings were included. The petition was dismissed in a decision mailed November 29, 2004 by the Office of Publications and renewed petitions were filed December 13, 2004, June 7, 2005, and August 24, 2005 each of which were dismissed in decisions mailed May 31, 2005, August 18, 2005 and September 15, 2005, respectively by the Office of Publications.

A petition filed August 11, 2006 was dismissed in a decision by this office mailed October 31, 2007 because as the previous petitions consistently argued that the

response to the Notice of Allowability was timely filed, the proof was not substantiated.

Comes now petitioner with yet another request for reconsideration.

The U.S. Patent and Trademark Office (Office) file is the official record of papers filed in this application. A review thereof does not reveal that a true copy of the amendment with a signed certificate of mail dated August 13, 2003 is of record. Further, it is assumed that the COPY of the amendment and certificate of mail was signed belatedly.

With the instant renewed petition, petitioner has not provided any additional proof to persuade the USPTO that in fact a timely response was filed on either August 13, 2003 or August 15, 2003. It is petitioner's burden to supply sufficient evidence to support the allegations made in the petition. In this case, petitioner has not offered any new arguments and has not yet met the burden that a response was timely filed.

Unless petitioner is able to provide proof of the claim that the response was timely filed this application will remain in an abandoned status.

Petitioner may wish however, to file a petition to revive under 37 CFR 1.137(a) or (b). Section 1.137(b) now provides that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

- (1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof;
- (2) the petition fee as set forth in 37 CFR 1.17(m) (\$675.00);
- (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and
- (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

The filing of a petition under the unintentional standard cannot be intentionally delayed and therefore should be filed promptly. A person seeking revival due to unintentional

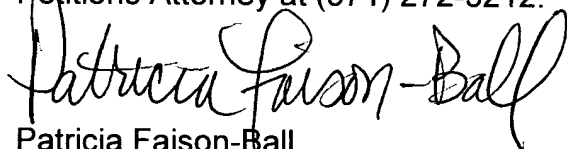
delay cannot make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By FAX: (571) 273-8300

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.

A handwritten signature in black ink, reading "Patricia Faison-Ball". The signature is written in a cursive, flowing style with a large initial "P".

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions